ISLAMIC LAW
SHARIA AND FIQH

Sharia (Arabic: شريعة; also **Sharī'ah**, **Shari'a**, **Shariah** or **Syariah**) is the Arabic word for **Islamic law**, also known as the **Law of Allah**. **Islam classically draws no distinction between religious, and secular life.** Hence Sharia covers not only religious rituals, but many aspects of day-to-day life, politics, economics, banking, business or contract law, and social issues.

Etymology

The term ***Sharia*** itself derives from the verb ***shara'a,*** which according to Abdul Mannan Omar's *Dictionary of the Holy Qur'an* connects to the idea of **"spiritual law" (5:48) and "system of divine law; way of belief and practice"** (45:18) in the **Quran**.

General

Mainstream Islam distinguishes between ***Fiqh,*** which means **'understanding of details'** and refers to the **inferences drawn by scholars**, and ***Sharia,*** which refers to the **principles that lie behind the *fiqh*. Scholars hope that *fiqh* and *sharia* are in harmony in any given case, but they cannot be sure.**

Sharia* has certain laws which are regarded as divinely ordained,** concrete and timeless for all relevant situations (for example, the ban against drinking liquor as an intoxicant). It also has certain laws which are extracted based on principles established by Islamic lawyers and judges (**Mujtahadun**). The ***sharia as interpreted by Islamic lawmakers is believed by Muslims to be merely a human approximation of the **true *Sharia*, which is understood as the divine and eternal correct path**. In deriving ***Sharia law***, Islamic lawmakers are not, therefore, actually creating divinely correct or incorrect actions beyond question, but rather attempting to interpret divine principles. **Hence *Sharia* in general is considered divine**, but a lawyer's or judge's extraction or opinion on a given matter is not, though the process and intention to refer to Allah's law is divinely sanctioned**. An Islamic lawyer or judge's attempts to rule according to *Sharia*, can be described as 'ruling by *Sharia*'**.

For **Sunni Muslims, the primary sources of Islamic law are the Quran, the Hadith or directions of the Islamic prophet Muhammad**, the unanimity (ertsulovneba) of Muhammad's disciples on a **certain issue** (**ijma**), and **Qiyas** (drawing analogy from the essence of divine principles). **Qiyas** — various forms of reasoning, including by analogy — are used by the **law scholars** (Mujtahidun) to deal with situations where the sources provided no concrete rules. The consensus of the community or people, public interest, and others were also accepted as secondary sources where the first four primary sources allow.

In Imami-Shi'I (Shiism) law, **the sources of law *(usul al-fiqh)*** are the **Qur'an, prophet Muhammad's practices** and **those of the 12 Imams**, and the **intellect *(aql).*** The practices called ***Sharia*** today, however, also have roots in **local customs** (**Al-urf**).

Islamic jurisprudence is called **Fiqh** and is divided into 2 parts: the study of the **sources and methodology** (***usul al-fiqh*** - roots of the law) and the **practical rules** (***furu' al-fiqh*** - branches of the law).

History and Background

The authority of ***Sharia*** is drawn from **2 primary sources**, as well as two secondary sources. The first major source is the specific guidance in the ***Quran,*** and the second source is the **Sunnah, literally the 'Way', i.e. the way that Muhammad lived his life.** (The compilation of all that Muhammad said, did or approved of is called the **Hadith**.)

A lesser source of authority is **Qiyas**, which is the extension by analogy of existing ***Sharia law*** to new situations. Finally, ***Sharia law*** can be based on **ijma, or consensus** (konsensusi, tanxmoba). Justification for this final approach is drawn from the **Hadith** where Muhammad states; *"My nation cannot agree on an error."* The role of **ulema,** i.e. scholars, is critical, since they are the ones who study the Islamic law and therefore have authority to represent it. **Sharia has largely been codified by the schools** (madhhabs) **of Islamic Jurisprudence** (Fiqh).

The comprehensive nature of ***Sharia law*** is due to the belief that the law must provide all that is necessary for a person's spiritual and physical well-being. All possible actions of a Muslim are divided (in principle) into **5 categories: obligatory** (valdebuleba)**, meritorious** (damsaxureba), **permissible** (nebis darTva), **reprehensible** (dagmoba), and **forbidden**.

Fundamental to the obligations of every Muslim are the **Five Pillars of Islam**:

- **The Testimony of Faith** (Shahadah) - the declaration that there is none worthy of worship except Allah (Arabic: God) and that **Muhammad** is His messenger.
- **Ritual Prayer** (Salat) - establishing of the five daily Prayers.
- **Obligatory (religious) almsgiving** (Zakat) - which is generally 2.5% of the total savings for a rich man working in trade or industry, and 10% or 20% of the annual produce for agriculturists. This money or produce is distributed among the poor.
- **Fasting** (marxva)
- **The Pilgrimage to Mecca** (Hajj) - this is done during the month of Zul Hijjah, and is compulsory once in a lifetime for one who has the ability to do it. If the Muslim is in ill health or in debt, he or she is not required to perform Hajj. They do this to show moral importance to Allah, and to join the **Ummah** (family of Islam)

Sections of Sharia law

Sharia law is divided into two main sections:

I The acts of worship, or al-ibadat, these include:

1. Ritual Purification
2. Prayers
3. Fasts (marxva)
4. Charities
5. Pilgrimage to Mecca

II Human interaction, or al-mu'amalat, which includes:

6. Financial transactions
7. Endowments (shecirva)
8. Laws of inheritance (memkvidreoba)
9. Marriage, divorce, and child care
10. Foods and drinks (including ritual slaughtering and hunting)
11. Penal punishments
12. Warfare and peace
13. Judicial matters (including witnesses and forms of evidence)

Contemporary Practice of Sharia Law

There is tremendous **variance in the interpretation and implementation of Islamic law in Muslim societies today**. Some believe that **colonialism**, which often replaced religious laws with secular ones, has caused this variance. More recently, **liberal movements within Islam** have questioned the relevance and applicability of ***sharia*** from a variety of perspectives. As a result, several of the countries with the largest Muslim populations, including **Indonesia, Bangladesh and Pakistan,** have **largely secular constitutions and laws**, with only a few Islamic provisions in family law. **Turkey has a constitution that is strongly secular.**

Likewise, most countries of the Middle East and North Africa maintain a dual system of secular courts and religious courts (**shura**), in which the **religious courts mainly regulate marriage and inheritance**. **Saudi Arabia and Iran maintain religious courts for all aspects of jurisprudence, and religious police assert social compliance**. ***Sharia*** is also used in **Sudan, Libya** and for a time in modern **Afghanistan**. Some states in northern **Nigeria** have reintroduced ***Sharia* courts (shura)**. In practice the **new *Sharia* courts** in Nigeria have most often meant the re-introduction of relatively harsh punishments without respecting the much tougher rules of evidence and testimony. The punishments include **amputation of one/both hands (s) for theft** and **stoning for adultery**. But overall the implementation of the ***Sharia law*** is meant to create a just society where the law and people live in harmony. Many Western views consider the punishments described above as harsh, but Islamic scholars argue, that if implemented properly, these punishments will serve as a deterrent to crime. Alternatively it has been argued that the Prophet Muhammad would not run courts in such a manner nor introduce overly harsh punishments into societies rich enough to afford prisons.

Like Jewish law and Christian canon law, Islamic law is interpreted differently by different people in different times and places. In the hands of moderates, religious law can be moderate and even liberal. In the hands of post-Enlightenment readers of philosophy, religious law becomes associated mainly with ritual, theology, or history and no longer regulates society or the state.

In the hands of fundamentalists, however, it is legally binding on all people of the faith and even on all people who come under their control. Islamic law to American Muslims in Boston, or Houston is very different than Islamic law to religious Muslims in Egypt, Saudi Arabia or Gaza Strip. All follow Islamic law, yet their view of the law varies as much as individual Muslims vary.

The role of women under Sharia

Islam does not prohibit women from working, but emphasizes the importance of housekeeping and caring for the families of both parents. In theory, Islamic law allows spouses to **divorce** at will, by saying **"I divorce you"** three times in public. In practice divorce is more involved than state proceedings vary. In 2003, for example, a **Malaysian court** ruled that, under ***Sharia law***, a man may divorce his wife via **text message** as long as the message was clear and (mkapio). Such a divorce, known as the **"triple talaq"** is not allowed in most Muslim states.

In addition, **women are generally not allowed to be clergy or religious scholars**. **Many interpretations of Islamic law hold that women may not have prominent jobs**, and thus are **forbidden from working in the government**. This has been a mainstream view in many Muslim nations in the last century, despite the example of **Muhammad's wife Aisha**, who both took part in politics and was a major authority on **hadith**.

Several non-Sharia Muslim countries have had female heads of government or state: Benazir Bhutto in Pakistan, Megawati Sukarnoputri in Indonesia, Tansu Ciller in Turkey, and Khaleda Zia and Sheikh Hasina in Bangladesh. Muslim women also hold important positions in governments or in corporations; the head of Pakistan's Central Bank is a woman (Dr. Shamshad Akhtar), and so is the Chairperson of Unilever Pakistan, **a Pakistani Army Female General is the first woman in the world to hold such a post**, and the list goes on as there are countless examples.

A Muslim may not marry or remain married to an unbeliever of either sex. **A Muslim man may marry a woman of the People of the Book**; traditionally, however, Islamic law forbids a Muslim woman from marrying a non-Muslim man. If the man chooses to convert to Islam then marriage would be allowed.

Domestic Justice

According to most interpretations, authorization for the **husband to physically beat disobedient wives is given in the Quran.** First, admonishment is verbal, and secondly a period of refraining from intimate relations. Finally, if the husband deems the situation appropriate, he may hit her: *"Men are the protectors and maintainers of women, because Allah has given the one more (strength) than the other, and because they support them from their means. Therefore the righteous women are devoutly obedient, and guard in (the husband's) absence what Allah would have them guard. As to those women on whose part ye fear disloyalty and ill-conduct, admonish them (first), (Next), refuse to share their beds, (And last) beat them (lightly); but if they return to obedience, seek not against them Means (of annoyance): For Allah is Most High, great (above you all).*" (Quran 4:34 English translation: Yusuf Ali)

The medieval jurist **ash-Shafii**, founder of one of the main schools of **fiqh**, commented on this verse that ***"hitting is permitted, but not hitting is preferable."*** The Arabic verse uses ***idribu¯hunna*** (from the root *daraba* ضرب), whose commonest meaning in Arabic has been rendered as **"beat"**, "hit", "scourge", or "strike". Besides this verse, other meanings for *daraba* used in the Qur'an) include 'to travel', 'to make a simile', 'to cover', 'to separate', and 'to go abroad', among others. For this reason - particularly in recent years some consider "hit" to be a misinterpretation, and believe it should be translated as "admonish (darigeba, rcheva) them, and leave them alone in the sleeping-places and separate from them." Certain modern translations of the Qur'an in the English language accept the commoner translation.

Several Hadith urge strongly against beating one's wife, such as: *"How does anyone of you beat his wife as he beats the stallion camel and then embrace (sleep with) her?* (Al-Bukhari, English Translation, vol. 8, Hadith 68, pp. 42-43), *"I went to the Apostle of Allah (peace be upon him) and asked him: What do you say (command) about our wives? He replied: Give them food what you have for yourself, and clothe them by which you clothe yourself, and do not beat them, and do not revile them.* (Sunan Abu-Dawud, Book 11, Marriage (Kitab Al-Nikah), Number 2139)".

"Honor killings" are, in the Western world, often erroneously identified as part of Islamic teaching, though they are in fact a cultural practice which is neither exclusive to, nor universal within, the **Islamic world**. Such killings take place within the Muslim communities around the Mediterranean as well as in the Penjab, India, non-Muslim parts of West Africa, and in Central America; while in Indonesia, the world's largest Islamic country, the status of the practice is unknown.

The stated reason for honour killings is the belief that the woman had caused the clan or family to lose honour by her alleged sexual activity and therefore deserved to be killed. Islamic teaching holds that life is given by Allah and should not be taken lightly, but it allows severe punishment, up to and including **capital punishment**, for certain kinds of crime; these include, in strict interpretations, all extramarital sexual relations (**zina**) by both men and women - though **only married adulterers may be punished with death**.

Crimes in Islam

Crimes under Islamic Law can be broken down into 3 major categories. Each will be discussed in greater detail with some **common law analogies**. The three major crime categories in Islamic Law are:

1. ***Hadd*** [plural ***Hudud***] **Crimes** (most serious).
2. ***Tazir*** **Crimes** (least serious).
3. ***Qesas*** **Crimes** (revenge crimes restitution).

Hadd crimes are the most serious under Islamic Law, and ***Tazir crimes*** are the least serious. Some Western writers use the felony (sisxlis samartlis kvalipikacia) analogy for ***Hadd crimes*** and misdemeanour (samokalako danashauli) label for ***Tazir crimes***. The analogy is partially accurate, but not entirely true. **Common Law has no comparable form of *Qesas crimes*.**

Punishments are prescribed in the Qur'an and are often harsh with the emphasis on corporal and capital punishment. Theft is punished by imprisonment or amputation of hands or feet, depending on the number of times it is committed.

Hadd Crimes

Hadd crimes are those which are punishable by a pre-established punishment found in the Qur'an. These most serious of all crimes are found by an exact reference in the Qur'an to a specific act and a specific punishment for that act. **There is no reducing the punishment for a *Hadd crime*. *Hadd crimes* have no minimum or maximum punishments attached to them.** The punishment system is comparable to the determinate (dadgenili) sentence imposed by some judges in the United States. **If you commit a crime, you know what your punishment will be.**

No judge can change or reduce the punishment for these serious crimes. **The *Hadd crimes* are**:

1. **Murder;**
2. **Apostasy from Islam (Making war upon Allah and His messengers)**
3. **Theft;**
4. **Adultery**
5. **Defamation (ciliswameba) (False accusation of adultery or fornication)**
6. **Robbery**
7. **Alcohol-drinking (any intoxicants)**

The first **four *Hadd crimes* have a specific punishment in the *Qur'an***. The last three crimes are mentioned but no specific punishment is found.

Some more liberal Islamic judges do not consider apostasy from Islam or wine drinking as *Hadd crimes.* The more liberal Islamic nations treat these crimes as ***Tazir*** or a lesser crime.

Hadd crimes have fixed punishments because they are set by God and are found in the Qur'an. ***Hadd crimes*** **are crimes against God's law and** ***Tazir crimes*** **are crimes against society.** The Islamic judge must look at a higher level of proof and reasons why the person committed the crime. **A judge can only impose the** ***Hadd*** **punishment when a person confesses to the crime or there are enough witnesses to the crime**. The **usual number of witnesses is two**, but **in the case of adultery four witnesses are required**. **Islamic law has a very high level of proof for the most serious crimes and punishments.** When there is doubt about the guilt of a ***Hadd crime***, the judge must treat the crime as a **lesser** ***Tazir crime***. If there is **no confession to a crime or not enough witnesses to the crime**, Islamic law requires the ***Hadd crime*** **to be punished as a** ***Tazir crime***.

Tazir Crimes

Modern Islamic Society has changed greatly from the time of the Prophet. Contemporary **Shar'iah Law** is now in written form and is statutory in nature. **Islamic concepts of justice argue that a person should know what the crime is and its possible punishment.** For example, **Egypt has a parliamentary process which has a formal penal code written and based upon the principles of Islamic Law**, but **Saudi Arabia allows the judge to set the** ***Tazir*** **crimes and punishments.** Modern Islamic Law recognizes many differences between these two nations. It also allows for much greater flexibility (mokniloba) in how it punishes an offender. **The major myth of many people is that judges in Islamic nations have fixed punishments for all crimes.** In reality the judges have much greater flexibility than judges under common law.

Tazir crimes **are less serious than the** ***Hadd crimes*** **found in the Qur'an**. ***Tazir*** **crimes** can and do have comparable **"minor felony equivalents."** These **"minor felonies" are not found in the Qur'an so the Islamic judges are free to punish the offender in almost any fashion.** Mohammed Salam Madkoar, who was the head of Islamic Law at the University of Cairo, makes the following observation (Ministry of the Interior, 1976, p.104):

"Tazir punishments vary according to the circumstances. *They change from time to time and from place to place. They vary according to the gravity of the crime and the extent of the criminal disposition of the criminal himself.*
Tazir crimes are acts which are punished because the offender disobeys God's law and word. *Tazir crimes can be punished if they harm the societal interest. Shar'iah Law places an emphasis on the societal or public interest. The assumption of the punishment is that a greater "evil " will be prevented in the future if you punish this offender now."*

Historically ***Tazir crimes*** **were not written down or codified**. This gave each ruler great flexibility in what punishments the judge was able to dispense. **The judge under Islamic Law is not bound by precedents, rules, or prior decisions as in common law. Judges are totally free to choose from any number of punishments that they think will help an individual offender.** The only guiding principle for judges under ***Shar'iah Law*** is that they must answer to Allah and to the greater community of Muslims. Some of the more common punishments for ***Tazir crimes*** are counselling, fines, public or private censure (gakicxva), family and clan pressure and support, seizure of property, confinement in the home or place of detention, and flogging (gajoxva).

In some Islamic nations, *Tazir crimes* are set by legislative parliament. Each nation is free to establish its own criminal code and there is a great disparity in punishment of some of these crimes. Some of the more common ***Tazir crimes*** are: bribery (meqrtameoba), selling tainted or defective products, treason (galati), usury (mevaxsheoba), and selling obscene pictures. The consumption of alcohol in Egypt is punished much differently than in Iran or Saudi Arabia because they have far different civil laws. **Islamic law has much greater flexibility than the Western media portrays**. Each judge is free to punish based upon local norms, customs, and informal rules. Each judge is free to fix the punishment that will deter (sheakavebs) others from crime and will help to rehabilitate an offender.

No Separation of Church and State

To understand Islamic Law one must first understand the assumptions of Islam and the basic tenets of the religion. **The meaning of the word 'Islam' is *"submission or surrender to Allah's (God's) will."*** Therefore, Muslims must first and foremost obey and submit to Allah's will. Mohammad the Prophet was called by **God to translate verses from the Angel Gabriel to form the most important book in Islam, the *Qur'an***, Muslims believe.

There are over **1.2 billion Muslims today world-wide, over 20% of the world's population**. There are 35 nations with population over 50% Muslim, and there are another 21 nations that have significant Muslim populations. There are 19 nations which have declared Islam in their respective constitutions.

The most difficult part of Islamic Law for most westerners to grasp is that there is no separation of church and state. The religion of Islam and the government are one. **Islamic Law is controlled, ruled and regulated by the Islamic religion.** The **theocracy** controls all public and private matters. Government, law and religion are one. There are varying degrees of this concept in many nations, but all law, government and civil authority rests upon it and it is a part of Islamic religion. There are civil laws in Muslim nations for Muslim and non-Muslim people. ***Shar'iah* is only applicable to Muslims. Most Americans and others schooled in Common Law have great difficulty with that concept. The U.S. Constitution (Bill of Rights) prohibits the government from "establishing a religion."** The U.S. Supreme Court has concluded in numerous cases that the U.S. Government can't favour one religion over another. That concept is implicit for most U.S. legal scholars and many U.S. academicians believe that any mixture of "church and state" is inherently evil and filled with many problems. They reject all notions of a mixture of religion and government.

Conclusions

Contemporary treatment of Islamic Law and "**Radical Muslims**" is filled with stereotypical characterizations. **Some in the Western media have used the "New York City bombings" as a way to increase hate and prejudice**. They have taken the views of a few radicals and projected them onto all Muslims. This action has done a great disservice to the Muslim world. Some academic writings also have been distorted and not always completely accurate and some researchers have concluded that Islamic Law requires a fixed punishment for all crimes.

Islamic Law is very different from English Common Law or the European Civil Law traditions. Muslims are bound to the teachings of the Prophet Mohammad whose translation of Allah or God's will is found in the Qur'an. **Muslims are held accountable to the *Shar'iah* Law, but non-Muslims are not bound by the same standard** (apostasy from Allah). Muslims and non-Muslims are both required to live by laws enacted by the various forms of government such as **tax laws, traffic laws, crimes of business, and theft**. These and many other crimes similar to Common Law crimes are tried in modern "***Mazalim Courts."*** The ***Mazalim Courts*** can also hear civil law, family law and all other cases. **Islamic Law does have separate courts for Muslims for "religious crimes" and contemporary non-religious courts for other criminal and civil matters.**

Appendix

World's Religions

N	Religion	No of Adherents	N	Religion	No of Adherents
1	Christianity	2.5 billion	12	Judaism	15 million
2	Islam	1.3 billion	13	Baha'i	7 million
3	Secular/Nonreligious/Agnostic/Atheist	1.1 billion	14	Jainism	4.2 million
4	Hinduism	900 million	15	Shinto	4 million
5	Chinese traditional religion	394 million	16	Cao Dai	4 million
6	Buddhism	376 million	17	Zoroastrianism	2.6 million
7	Primal-indigenous	300 million	18	Tenrikyo	2 million
8	African Traditional & Diasporic	100 million	19	Neo-Paganism	1 million
9	Sikhism	23 million	20	Unitarian-Universalism	800 thousand
10	Juche	19 million	21	Rastafarianism	600 thousand
11	Spiritism	15 million	22	Scientology	500 thousand